

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXXXXXXX

DOCKET NUMBER: BC-2012-04760

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to change his narrative reason for separation.

RESUME OF THE CASE

The applicant is a former Air Force airman basic (E-1).

On 4 Jun 13, the Board considered and denied his request to change his narrative reason for separation, finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the Air Force Board for Correction of Military Records Letter and Record of Proceedings at Exhibit E.

On 3 Jun 24, the applicant requested reconsideration of his request to change his narrative reason for separation. He again contends he was injured while serving. The applicant sustained a back injury while serving on active duty. Because of the medication he was taking at the time of his drug screening, it showed positive for opioids. The applicant had overcome opioid addiction over 30 years ago. He is a professional heavy equipment operator with 24 years of experience. The applicant had worked with the Department of Defense for over seven years. He currently holds a helmsman license.

The applicant's service-connect disability is what gave the reason for drug abuse. He served his country in uniform and out of uniform. He is an asset to his community as well as a parent and husband. This change will help to give his family a better life.

The applicant also check-marked "PTSD" [Post-Traumatic Stress Disorder] on his DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552*. In support of his reconsideration request, the applicant submitted the following new evidence: (1) Character Letter; and (2) Email from congressional staff, dated 1 May 24.

The applicant's complete submission is at Exhibit F.

POST-SERVICE INFORMATION

On 12 Dec 24, the Board sent the applicant a request for post-service information, including a standard criminal history report from the Federal Bureau of Investigation; however, he has not replied.

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memo, to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memo.

On 12 Dec 24, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit H).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor finds insufficient evidence to support the applicant's request for an upgrade of his discharge.

There is no evidence in the applicant's record he was ever diagnosed with PTSD during his service, at discharge, or post-service. The applicant does not have any service-connection for a mental health disorder. His diagnoses predominately consist of substance use disorders. He was diagnosed with adjustment disorder post-service (2013) related to his current job stressors at the time.

The applicant contends his misconduct was due to testing positive for opioids. While his record noted he was positive for barbiturates and marijuana, there is no documentation the applicant ever tested positive for opioids. His misconduct does not consist of opioid usage. The applicant was separated from the military for wrongful use of marijuana. Additionally, there is evidence the applicant used drugs prior to his military service. A mental health encounter, dated 29 Nov 04, noted the applicant first used cannabis in junior high school and cocaine when he was 17 years old. The applicant was 23-24 years old when he entered the military.

This Psychological Advisor concludes the applicant does not have a mental health condition that would mitigate or excuse his Misconduct of Drug Abuse for wrongfully using marijuana.

After considering the entire record and contentions, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate the misconduct. A review of the available records finds no error or injustice with the applicant's discharge, and insufficient evidence has been presented to support the applicant's request. Liberal consideration is applied to the applicant's petition due to the contention of a mental health condition. The following are responses to the four questions from the Kurta Memorandum based on information presented in the records:

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
The applicant check-marked PTSD on his application.

2. Did the condition exist, or experience occur, during military service?
There is no evidence in the applicant's record he was ever diagnosed with PTSD during his service, at discharge, or post-service. The applicant does not have any service-connection for a mental health disorder. His diagnoses predominately consist of substance use disorders. He was diagnosed with adjustment disorder post-service related to current job stressors at the time.

3. Does the condition or experience excuse or mitigate the discharge?
This Psychological Advisor concludes the applicant does not have a mental health condition that would mitigate or excuse his Misconduct of Drug Abuse for wrongfully using marijuana.

4. Does the condition or experience outweigh the discharge?
Since the applicant's mental health condition does not excuse or mitigate the discharge, the applicant's condition also does not outweigh the original discharge.

The complete advisory opinion is at Exhibit I.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 Jan 25 for comment (Exhibit J) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale of the AFRBA Psychological Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence in the applicant's record he was ever diagnosed with PTSD during his service, at discharge, or post-service. The applicant does not have any service-connection for a mental health disorder. Furthermore, the applicant was discharged for wrongful use of marijuana. There is no evidence the applicant was prescribed marijuana to treat any medical condition, to include back injury. Liberal consideration was applied; however, the applicant's mental health condition does not excuse or mitigate his discharge.

In the interest of justice, the Board considered upgrading the discharge based on fundamental fairness; however, given the evidence presented, and in the absence of post-service information/criminal history provided by the applicant, the Board finds no basis to do so. Therefore, the Board recommends against correcting the applicant's record.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2012-04760 in Executive Session on 16 Apr 25:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 18 Jun 13.
Exhibit F: Application, DD Form 149, w/atchs, dated 3 Jun 24.
Exhibit G: Documentary evidence, including relevant excerpts from official records.
Exhibit H: Letter, SAF/MRBC, w/atchs (Post-Service Request and Liberal Consideration Guidance), dated 12 Dec 24.
Exhibit I: Advisory Opinion, AFRBA Psychological Advisor, dated 3 Jan 25.
Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Jan 25.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR